

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ROY JACK WILLIAMS,

Plaintiff,

v.

Case No. CIV-13-828-D

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,

Defendant.

**DEFENDANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S
MOTION FOR ATTORNEY FEES**

Defendant Allstate Fire and Casualty Insurance Company ("Allstate"), pursuant to Fed.R.Civ.P. 68 and 12 O.S. §1101.1, moves this Court to grant Defendant an award of reasonable attorney fees. The following Brief is submitted in support of this Motion.

ARGUMENTS AND AUTHORITY

On September 30, 2016, summary judgment was granted to Defendant on Plaintiff's "bad faith" claim alleging delay in payment of auto med pay benefits which purportedly caused him "emotional distress". (See Order and Judgment, Dkt. Nos. 134 and 135].

Pursuant to federal procedural rule (Fed.R.Civ.P. 68) and state substantive law (12 O.S. 1101.1), Defendant mailed and served an Offer of Judgment on Plaintiff's counsel on March 27, 2015. (Exs. 1 and 2). The Offer of Judgment was rejected because no acceptance or response to the Offer was ever made. The fees requested by this Motion¹ were incurred after April 10, 2015 (beginning 14 days after Plaintiff's receipt of Allstate's Offer of Judgment) in the sum of \$74,288.00 representing 482.2 hours of billable time spent on the case by the defense. (Ex. 3).

¹ The requested fees in Exhibit 3 do not include all services rendered. Services described by entries that revealed privileged and confidential information have been redacted. No award for those services is being requested.

The hourly rates on which such fees are calculated are the rates usually charged by defense counsel to this Defendant in similar litigation. Verification of the above facts is set forth in Exhibit 4, the Affidavit of Counsel. An itemized copy of the fees requested is provided at Exhibit 3.

An award of attorney fees incurred by an insurer in a bad faith case resulting from Plaintiff's rejection of an Offer of Judgment is expressly permitted by law. In *Scottsdale Insurance Company v. Tolliver*, 636 F.3d 1273 (10th Cir. 2011), the 10th Circuit affirmed an award of attorney fees to an insurer where the defendant followed the *procedural* requirements of Rule 68 with respect to serving the Offer of Judgment (*Id.* *1281) and relied on state statutory law, 12 O.S. 1101.1, as the *substantive* basis for such fees. *Id.*

Here, Plaintiff demanded actual damages for "bad faith" in excess of \$75,000 (Complaint, Dkt. No. 1, ¶ 36), plus an award of punitive damages (*Id.* ¶ 39) which would allow for a recovery under Oklahoma law of an amount equal to the actual damages awarded or \$100,000, whichever is greater. (23 O.S. §9.1 B). Consequently, the award of attorney fees in this case is proper whether the claim is characterized as one for "personal injury" under 1101.1(A) or constitutes an "other action" under 1101.1(B).

WHEREFORE, Defendant requests that the Court enter judgment on its behalf and against the Plaintiff for the award of attorney fees as the prevailing party in the amount of \$74,288.00.

Respectfully submitted,

s/ RONALD L. WALKER

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2016, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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